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*Kevin Smith*

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tax court

ATTORNEYS FOR APPELLEE:

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Attorney General of Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

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APPEAL FROM THE TIPTON CIRCUIT COURT  
The Honorable Thomas R. Lett, Judge  
Cause No. 80C01-0708-FC-216

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Tommy P. Sanders appeals his conviction of and sentence for Class C felony robbery.<sup>1</sup> We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On August 15, 2007, Sanders entered the Madison County Federal Credit Union. He paused to write a note that said, “Don’t sound the alarm. I don’t want to harm anyone. Give me everything in the drawer except the bait pack.” (Tr. at 258.) He then approached teller Brenda Gibson and gave her the note. Cindy Bucci and Cory Graybl, the tellers on either side of Gibson, pressed their silent alarm buttons when they saw Gibson handing over bundles of cash. Sanders grabbed the cash and fled, but was quickly apprehended.

After a jury trial, Sanders was convicted of Class C felony robbery. The trial court sentenced him to the maximum term of eight years,<sup>2</sup> citing as aggravating factors Sanders’ criminal history and the extent of emotional distress suffered by the tellers.

### **DISCUSSION AND DECISION**

Sanders raises two issues: (1) whether there was sufficient evidence he placed the tellers in fear; and (2) whether the trial court erred by imposing the maximum sentence.

#### **1. Sufficiency of the Evidence**

When reviewing the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider the evidence favorable to the verdict and the reasonable inferences

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<sup>1</sup> Ind. Code § 35-42-5-1.

<sup>2</sup> The sentencing range for a Class C felony is two to eight years. Four years is the advisory sentence. Ind. Code § 35-50-2-6.

drawn therefrom. *Id.* We will affirm if a reasonable jury could find the defendant guilty beyond a reasonable doubt. *Id.*

Ind. Code § 35-42-5-1 provides in relevant part:

A person who knowingly or intentionally takes property from another person or from the presence of another person:

- (1) by using or threatening the use of force on any person; or
  - (2) by putting any person in fear;
- commits robbery, a Class C felony.

Sanders argues the State failed to prove the element of fear because he did not speak during the robbery, brandish a weapon, or make any threatening movements. His argument ignores the evidence favorable to the verdict.

Sanders' note stated, "I don't want to harm anyone." (Tr. at 258.) This statement implied he was willing to use violence if Gibson did not cooperate. Gibson testified that when she received the note, she felt

[v]ery, very upset. I feel still to this day that I've been violated. It's a very traumatic experience. I hope nobody ever has to go through anything like that. It's – you don't know whether there's a weapon or not. You have no idea. You don't know whether he's going to physically harm you or not and it's just very frightening.

(*Id.* at 63.) Bucci also testified she was "[v]ery scared. In my line of work that's the worst thing that can possibly happen to someone. I mean it's just the uncertainty of what could have happened." (*Id.* at 38.) Officer Jack Miller testified Bucci was upset when he interviewed her. Graybl testified she did not feel threatened at the time of the robbery because the situation felt "surreal," (*id.* at 56), but Officer Randy Davis testified she was "shaky" when she was giving him Sanders' description. (*Id.* at 171.)

Constance Green, who was in the loan office during the robbery, testified the tellers were not “hysterical” because “they’re very good at what they do,” but they were “frightened” and “excited.” (*Id.* at 78.) Mary Jane Adams, a customer who arrived at the Credit Union soon after the robbery, testified the tellers “weren’t crying but they were upset.” (*Id.* at 97.) Jim Thiemet, the chief technology officer for the Credit Union, testified that “mentally [the tellers] were very rattled. [Gibson] was shaky and you could tell she was very agitated. Cindy Bucci, when I spoke to her, she actually had to remove herself from the situation and go into a side room because she broke down.” (*Id.* at 225.)

The testimony of the tellers and those who observed their behavior after the robbery, along with the reasonable inferences from Sanders’ note, were sufficient to prove beyond a reasonable doubt the element of fear. *See Jones v. State*, 859 N.E.2d 1219, 1225 (Ind. Ct. App. 2007) (affirming conviction of robbery where Jones gave teller a note demanding money and teller testified “she felt nervous, scared, uncomfortable, and a little fearful” when she received the note), *trans. denied* 869 N.E.2d 455 (Ind. 2007). Therefore, we affirm the conviction.

## 2. Sentence

Sanders argues the trial court erred by imposing the maximum sentence because his criminal history consisted of only one conviction of Class A misdemeanor possession of marijuana and pending charges of Class D felony possession of a controlled substance and Class D felony theft.<sup>3</sup> Sanders does not cite legal authority in support of his

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<sup>3</sup> Sanders’ counsel included Sanders’ presentence investigation report on white paper in his appendix. App. R. 9(J) requires documents and information excluded from public access pursuant to Ind.

argument, but he appears to be arguing the trial court erred in its weighing of his criminal history. However, we no longer review a trial court's weighing of aggravating circumstances. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g on other grounds* 875 N.E.2d 218 (Ind. 2007). Sanders does not argue the trial court abused its discretion in a manner that remains open to review after *Anglemyer*, *see id.* at 490-91, nor does he argue the sentence was inappropriate in light of his character and the nature of his offense pursuant to Ind. Appellate Rule 7(B). Sanders has not made a cogent argument supported by authority; therefore, his sentencing argument is waived. App. R. 46(A)(8)(a); *Baxter v. State*, 891 N.E.2d 110, 113 n.1 (Ind. Ct. App. 2008).

Affirmed.

NAJAM, J., and ROBB, J., concur.

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Administrative Rule 9(G)(1) be filed in accordance with Trial Rule 5(G). Presentence reports are excluded from public access and are confidential. Counsel's inclusion of the presentence investigation report on white paper in the appendix is therefore inconsistent with Trial Rule 5(G), which requires such documents be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential." *Hamed v. State*, 852 N.E.2d 619, 621 (Ind. Ct. App. 2006).